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No. 99-1529

In The

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, a Minor, by and through her Natural Parent Kate Breiner, and David Egelhoff,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Washington

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF OF THE BOEING COMPANY AND THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

Pursuant to Rule 37 of the Court, *amici curiae* The Boeing Company ("Boeing") and the National Association of Manufacturers (the "NAM") move for leave to file the accompanying brief *amici curiae*.

Petitioner has consented to the filing of this brief *amici curiae*. The consent letter of Petitioner's counsel is filed herewith. Although requested by the *amici curiae* to do so, Respondents have not consented to the filing of the brief *amici curiae*.

The accompanying brief of the *amici curiae* brings the viewpoint of sponsors and administrators of employee benefit plans governed by the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA"), concerning the issues raised by the Petition for a Writ of Certiorari in this case.

Boeing is an aerospace company that has business operations in 45 states and employs approximately 173,000 persons who are covered by various pension plans and employee welfare benefit plans sponsored by Boeing and governed by ERISA. Boeing is the sponsor of the life insurance plan and the pension plan that provided the employee benefits at issue in this case.

The NAM represents approximately 14,000 member companies and 350 member associations serving manufacturers and employees in every industrial sector in all 50 states. Members of the NAM sponsor a wide range of employee benefit plans.

The *amici curiae* believe that the viewpoint of sponsors and administrators of ERISA-governed employee benefit plans will provide the Court with a perspective on the issues raised in the Petition for a Writ of Certiorari which is different in many respects from the perspective of benefit claimants such as Petitioner and Respondents in this case.

Amici curiae respectfully request that the Court grant this motion for leave to file the accompanying brief.

Respectfully submitted,

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BRIEF OF THE BOEING COMPANY AND THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Amici curiae The Boeing Company ("Boeing") and the National Association of Manufacturers (the "NAM") respectfully submit this brief in support of Petitioner Donna Rae Egelhoff's Petition for a Writ of Certiorari to review the judgment of the Supreme Court of Washington in this case.[1]

STATEMENT OF INTEREST

Boeing is an aerospace company that employs approximately 173,000 persons in business operations located in 45 states. Boeing sponsors various pension plans and employee welfare benefit plans that are subject to the provisions of the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA"), and that provide benefits to Boeing's employees. Boeing, through delegation of authority to a committee consisting of Boeing employees, acts as the administrator of these ERISA-governed employee benefit plans. Boeing is the sponsor of the life insurance plan and the pension plan that provided the employee benefits at issue in this case.

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[1] Counsel for a party did not author this brief in whole or in part. No one, other than the *amici curiae*, or their counsel, made a monetary contribution to the preparation or submission of this brief. Boeing has provided Petitioner Donna Rae Egelhoff with financial support in connection with her Petition for a Writ of Certiorari to review the decision below.

Boeing submits this brief to highlight for the Court the enormous practical problems created for plan administration – problems that Congress had foreseen and sought to avoid – from state-by-state adjudication of plan beneficiary status as contemplated by the decision below.

The decision below conflicts with ERISA and threatens the uniformity and predictability of plan administration. Boeing and other ERISA plan administrators and sponsors are placed in an untenable state of uncertainty by the continuing split of judicial authority concerning the extent to which ERISA preemption offers protection to the beneficiary designation schemes incorporated into employee benefit plans. If Boeing administers its plans in accordance with the holding of the decision below, it will place itself at risk of violating fiduciary duties imposed by ERISA and at risk of double payment of benefits to competing benefits claimants.

The NAM is the nation's oldest and largest broad-based industrial trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states.

The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding about the importance of manufacturing to America's economic strength. To this end, the NAM participates in cases as *amicus curiae* to promote

fairness and efficiency in the litigation process. The interpretation of legal obligations under federal statutes like ERISA is important to all companies that must compete in an increasingly global economy.

Boeing and the NAM also have strong interests in having the Court review whether the decision below erroneously constricts the scope of the uniform national law of employee benefits intended by Congress when it enacted ERISA. They are concerned that an overly restrictive application of ERISA preemption will force employee benefit plans to use more resources on administration and litigation costs, with fewer resources available for benefits.

ARGUMENT

I. DIVISION OF JUDICIAL AUTHORITY AS TO WHETHER STATE LAW MAY OVERRIDE ERISA BENEFICIARY DESIGNATIONS ADVERSELY IMPACTS ERISA PLANS AND PLAN ADMINISTRATORS.

A. THE DECISION BELOW PLACES ERISA PLAN ADMINISTRATORS AT RISK OF LIABILITY FOR BREACH OF ERISA FIDUCIARY DUTIES.

Plan administrators, to the extent they exercise discretionary authority or control over management of ERISA-governed plans, are fiduciaries with respect to such plans. 29 U.S.C. § 1002(21)(A); 29 C.F.R. § 2509.75-8, at D-3 (U.S. Department of Labor regulation stating that a plan administrator by "the very nature of his position" has discretionary authority and is an ERISA fiduciary).

Among the fiduciary duties expressly stated in ERISA is the requirement that fiduciaries discharge their duties with respect to a plan "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA]." 29 U.S.C. § 1104(a)(1)(D) (hereinafter "Section 1104(a)(1)(D)"). Plan administrators who breach their fiduciary duties are personally liable for any loss to the plan and subject to such other equitable or remedial relief as a district court may deem appropriate. 29 U.S.C. § 1109(a). With respect to a breach of fiduciary duty, the Secretary of Labor and plan beneficiaries are authorized to bring civil actions in district court for appropriate relief against breaching fiduciaries. 29 U.S.C. § 1132(a)(3), (e)(1).

In this case, the beneficiary designation system established in the Boeing plans is similar to such systems commonly incorporated into ERISA plans. *See, e.g., Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 12 (2d Cir. 1993); *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990). That system provides for benefit payments to beneficiaries designated on official beneficiary designation forms filed with the plan administrator. Pet. App. 9a & n.39.[2]

The decision of the Washington Supreme Court below does not take issue with Petitioner's contention that, in the absence of the state statute at issue, Wash. Rev. Code § 11.07.010 (hereinafter "RCW 11.07.010"), she

[2] "Pet." references pages in the Petition for a Writ of Certiorari filed in this case, and "Pet. App." references pages in the Appendix to the Petition.

would be entitled to the plan benefits under documents and instruments that govern the Boeing plans. The Washington Supreme Court decision, however, minimizes the significance of the fact that application of RCW 11.07.010 results in the payment of plan benefits to persons different from those to whom plan benefits would be paid if the plan documents and instruments were followed pursuant to Section 1104(a)(1)(D). Without further analysis, the Washington Supreme Court observed:

> Benefits under the plan remain to be distributed in accord with the plan documents under ERISA. While a state statute such as RCW 11.07.010 may bring the default distribution provisions into effect, it does not alter the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration.

Pet. App. 21a (footnote omitted). Having concluded that payment of benefits to persons other than the designated beneficiary is, nonetheless, "in accord with the plan documents under ERISA," the Washington Supreme Court held that Respondents "are entitled to receive the benefits." *Id.*; Pet. App. 28a. Without acknowledging that it does so, the Washington Supreme Court decision finds that RCW 11.07.010 overrides and invalidates provisions of plan documents.

The Secretary of Labor, the federal officer mandated to interpret and enforce the fiduciary duty provisions of Title I of ERISA, *see* Pet. App. 50a, however, takes a position contrary to that of the Washington Supreme Court. In her *amicus brief* to the court below, the Secretary stated her agreement with the line of cases represented

by *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996), which finds that Section 1104(a)(1)(D) establishes "a clear mandate that plan administrators follow plan documents to determine the designated beneficiary." The *Pressley* line of cases requires plan administrators to follow a beneficiary designation scheme set forth in plan documents. Pet. App. 58a. Under *Pressley*, failure to do so would violate the fiduciary obligation stated in Section 1104(a)(1)(D).

The dilemma for ERISA plan administrators is stark. If they comply with state laws such as RCW 11.07.010 to override the plan's beneficiary designation procedures, administrators will subject themselves to risk of liability for breach of Section 1104(a)(1)(D) fiduciary duties in civil actions that may be brought by the Secretary of Labor or by persons claiming benefits under the plan's beneficiary designation. Given the array of potential venues open to plaintiffs under 29 U.S.C. § 1132(e)(2), there is also a considerable risk that such litigation may be brought in a district court within a judicial circuit that has adopted the rule established in the *Pressley* line of cases.

B. THE CURRENT SPLIT OF JUDICIAL AUTHORITY PLACES EMPLOYEE BENEFIT PLANS AT RISK OF DOUBLE PAYMENT OF BENEFITS AND/OR ADDITIONAL LEGAL COSTS.

ERISA plan administrators are charged with the fiduciary duty to provide benefits to plan beneficiaries pursuant to the provisions of the plan. 29 U.S.C.

§ 1104(a)(1)(A)(i) and (D). Administrators have the duty to interpret plan provisions and to make decisions as to who is entitled to receive benefits. However, in situations similar to those presented by the facts of this case, a decision by an administrator to pay benefits to one competing claimant puts the plan at risk of double payment of benefits.

As pointed out by Petitioner, Pet. 26, this case provides a clear illustration of this risk. Aetna Life Insurance Company ("Aetna"), the insurer and claims administrator for the Boeing life insurance plan in this case, paid $46,000 in life insurance benefits to Petitioner Donna Rae Egelhoff in August 1994. Pet. App. 4a. This payment was made pursuant to David Egelhoff's beneficiary designation form and in compliance with Aetna's ERISA obligation to act in accordance with the documents and instruments governing the plan. Aetna is now faced with pending litigation in which Respondents in this case are seeking to recover the life insurance plan benefits that Aetna paid to Petitioner more than five and a half years ago. *See* Pet. 26 & n.8. If Respondents are successful in obtaining a second payment of these benefits, there is no certainty that Aetna will be able to recover the first payment.

The additional costs from such double payments and from related litigation will inevitably be reflected in increased costs for benefit plans and an inevitable reduction in economic resources available for benefit payments.

Although employee benefit plans can avoid double payment risks by filing interpleader actions and naming

the competing claimants as interpleader defendants, *see* 28 U.S.C. § 2201, interpleader actions themselves impose economic costs and risks. As Judge Hall observed in the *Emard* decision,

> even this [reduced interpleader] burden might, in the aggregate, discourage the use of interpleader or similar procedural devices, disrupt the uniform administration of ERISA plans, and perhaps lead employers to reduce plan benefits or eliminate some benefits altogether.

Emard v. Hughes Aircraft Co., 153 F.3d 949, 963 (9th Cir. 1998) (Hall, J., concurring in part and dissenting in part), *cert. denied*, 525 U.S. 1122 (1999).

In addition to the costs of bringing interpleader lawsuits, employee benefit plans may face claims for recovery of attorneys' fees by prevailing claimants in interpleader actions. 29 U.S.C. § 1132(g)(1).

Furthermore, if the current split of authority on the issues in this case encourages employee benefit plans to routinely pass the administrative decision-making tasks to the courts through interpleader lawsuits, there will be added social costs in the form of increased burdens on the courts.

II. THE DECISION BELOW FRUSTRATES ERISA'S OBJECTIVE OF ESTABLISHING A UNIFORM NATIONAL LAW OF EMPLOYEE BENEFITS AND ADVERSELY IMPACTS ADMINISTRATION OF ERISA PLANS.

In *Boggs v. Boggs*, 520 U.S. 833, 841 (1997), the Court recognized that ERISA's preemption clause, 29 U.S.C.

§ 1144, will preempt state law that "conflicts with the provisions of ERISA or operates to frustrate its objects." In enacting ERISA and ERISA's broad preemption clause, Congress intended to provide plan sponsors and plan administrators with the advantages of a nationally uniform law of employee benefits and a uniform set of administrative procedures governed by a single set of regulations. *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 12 (1987).

In *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656-57 (1995), the Court observed:

> We have found that in passing § 514(a), Congress intended
>
> > "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction." *Ingersoll-Rand [Co. v. McClendon]*, 498 U.S. [133,] at 142, 111 S.Ct. at 484 [1990].
>
> . . . The basic thrust of the pre-emption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans.

Under ERISA, a plan sponsor has discretion to incorporate administrative procedures into the plan documents, as long as those procedures are consistent with ERISA's provisions. Section 1104(a)(1)(D). Where plan documents provide for payment of benefits to the beneficiary designated on a form on file with the plan, plan administrators merely have to review the plan's files to determine the proper beneficiary. The courts have recognized the efficiency of this simple approach. *See, e.g., McMillan*, 913 F.2d at 312 (Pursuant to ERISA, "administrators and courts need look no further than the plan documents to determine the beneficiary, thus avoiding expensive litigation.").

By taking a purported "signal" from the Court for a "significant retreat" from ERISA preemption, Pet. App. 12a, the decision below threatens employee benefit plans with the added burdens of the multiplicity of state regulations that Congress sought to avoid.

A. THE DECISION BELOW FORCES A MULTIPLICITY OF STATE REGULATIONS ON ERISA PLAN ADMINISTRATORS.

If, as the decision below finds, state law may be used to override ERISA beneficiary designations, the administrators of employee benefit plans with participants and beneficiaries in multiple states will be required to develop and maintain a functional knowledge of the applicable law of numerous states. The Boeing plan administrators, by way of example, would need to determine whether state laws in at least 45 different states operate to override plan beneficiary designations. The

administrators would need to be knowledgeable of judicial and administrative interpretations of such state laws. They would need to keep current on changes in these laws and interpretations of these laws.

Given the mobility of the American workforce and population, it is inevitable that even small ERISA plans covering participants employed in a single state would face similar burdens of multiplicity of state regulations. Retirees with vested pension benefits often relocate in different states with their spouses. If such a couple later divorces and the pension plan participant dies without changing a previously filed beneficiary form designating the spouse, the administrator of the plan would be required to become knowledgeable of state law of the state of residence, with which the sponsoring employer, the plan and the administrator may have had no previous connection.

By contrast, a uniform national rule that allows administrators to follow the beneficiary designation procedures adopted in governing plan documents will avoid these burdens. This is the uniformity that Congress intended and incorporated into the provisions of ERISA. Section 1104(a)(1)(D); 29 U.S.C. § 1144(a).

B. THE DECISION BELOW THREATENS TO IMPOSE COMPLEX CONFLICT-OF-LAW ISSUES ON EMPLOYEE BENEFIT PLANS.

By finding that state law may be used to override ERISA beneficiary designations, the decision below threatens to impose complicated conflict-of-law issues on ERISA plan administrators. In many instances, the facts

and circumstances presented to plan administrators would provide little guidance as to which state laws concerning beneficiary designations should be applied.

Although a seemingly endless array of hypothetical situations could be developed, the actual facts in the case of *Hill v. AT&T Corp.*, 125 F.3d 646 (8th Cir. 1997), illustrate the potential complications that ERISA plan administrators would face if ERISA's uniformity principle is abandoned. The facts in *Hill* include the following:

(1) John and Judy Hill were married in the State of Missouri in 1970;

(2) while married and a resident of Missouri, Judy was employed by AT&T;

(3) thereafter the couple moved to the State of Washington where Judy continued her employment with AT&T;

(4) in 1979, Judy designated John as her primary beneficiary under the AT&T savings plan on the plan's beneficiary designation form;

(5) in July 1986, the couple separated and John returned to Missouri;

(6) Judy filed for divorce and a Washington court granted a default divorce decree in November 1986;

(7) Judy never modified her designation of John as her beneficiary under the plan;

(8) following the divorce, Judy moved to the State of Rhode Island, where she died in 1991 while still employed by AT&T;

(9) John and the contingent beneficiary listed on the plan's beneficiary designation form both claimed entitlement to Judy's plan benefits;

(10) despite receiving notice of these competing claims, the plan paid benefits to the contingent beneficiary;

(11) John then filed a lawsuit in Missouri, claiming the benefits under the provisions of Washington law, as it existed prior to the adoption of RCW 11.07.010.

Id. at 647-48.

These and similar sets of facts present little administrative difficulty for plan administrators if they are able to follow ERISA's directive to use the beneficiary designation procedures of the plan documents. Section 1104(a)(1)(D). By contrast, if state law is permitted to override ERISA beneficiary designation procedures, plan administrators would repeatedly face difficult conflict-of-law issues. Which state law would govern? What facts would administrators have to develop to make this determination? How are those facts to be weighed? Which state's rules of conflicts will govern? These conflict-of-law burdens would be in addition to whatever further burdens may be imposed by application of substantive state law – once the applicable state law has been determined.

To allow state law to override ERISA's beneficiary designation procedures will significantly erode Congress's intended national uniformity of employee benefits

law, and will impose significant administrative burdens on plan administrators.

CONCLUSION

For the foregoing reasons, Boeing and the NAM respectfully request the Petition for a Writ of Certiorari be granted.

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